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IN THE
Supreme Court of the United States

October Term 1968

No. [redacted] 135

CALVARY BIBLE PRESBYTERIAN CHURCH OF SEATTLE,
a non-profit corporation;

TACOMA BIBLE PRESBYTERIAN CHURCH,
a non-profit corporation;

REV. THOMAS W. MILLER and REV. HAROLD WEBB,
Petitioners,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER STATEMENT OF THE CASE

Because of the argumentative nature of the petitioners' statement of the case, respondent feels compelled to make this statement of the essential facts:

As was affirmed by the Supreme Court of the State of Washington, the record at the trial of this cause amply supports the trial court's findings that English 390: The Bible as Literature has been a regularly offered course of the University of Washington since 1919 and concerns itself with the literary features of the Bible and, as a necessary part thereof, the history of ancient Israel, the authorship and treatment of the various books of the Bible, and interpretation of the Bible from a literary

and a historical point of view, employing the same techniques of scholarship used in the study of any other literary or historical text. English 390 is offered by the University of Washington as a part of a secular program of education to advance knowledge of its students and the learning of mankind, and the faculty members who teach English 390 are regularly appointed members of the English Department of the University of Washington, and they teach English 390 as a regular part of their academic duties. Each professor selects his own English translation of the Bible for use in the course.

English 390 affords students the opportunity for a study *about* religious ideas, religious behavior, and religious institutions at the hands of competent scholars; it is a study of the Bible for its literary and historical qualities, presented objectively as a part of a secular program of education and does not promote a particular theology for purposes of religious indoctrination, nor is it slanted in a religious direction, nor does it induce any particular religious belief, nor does it advance any particular religious interests or theology. Courses such as English 390 are a common part of the curriculum of state universities throughout the United States, and a knowledge of the Bible is necessary for an understanding of English and American literature because of its frequent allusions to the Bible and its concepts in such literature. English 390, in short, is a study of the Bible presented objectively as part of a secular program of education. (R. Tr. 11)

REASONS FOR NOT GRANTING THIS WRIT

1. Petitioners' contention that teaching English 390 at the University of Washington is a violation of the Establishment Clause of the First Amendment, United States Constitution, does

not raise a substantial federal question for review. The issue was raised by petitioners at the trial court and at the State Supreme Court, and those courts found that the course not only did not violate the First Amendment proscription, but that it did not violate the more explicit provisions of Washington's Constitution which forbid the use of public money or property for any religious worship, exercise or instruction. (Wash. Const. Art. 1, Sec. 11) This Court may not have been afforded an opportunity in any previous decision to rule on the precise issues raised by the instant petition, but respondent submits that the conclusions of the trial judge and the Washington Supreme Court are in accordance with the dicta of this Court in related opinions.

Thus, in *School District of Abington v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed. 2d 844, where this Court ruled that the daily recitation of verses of the Lord's Prayer as a part of the opening ceremonies in the public schools of Abington Township was a violation of the Establishment Clause of the First Amendment, Justice Clark, speaking for the Court, noted that the state was:

> "requiring the selection and reading at the opening of the school day of verses from the Holy Bible and the recitation of the Lord's Prayer by the students in unison."

This Court stated there was little doubt as to the religious character of the exercises and that they violated the Establishment Clause of the First Amendment. Justice Clark observed, however, that

> "Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment."

Justice Brennan in his concurring opinion in *Schempp, supra,* distinguished that case from one which might involve the "non-devotional use of the Bible in the public schools." He said:

> "The holding of the court today plainly does not foreclose teaching *about* the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion." (374 U.S. p. 300)

Thus, while its expressions may have been dicta, this Court has spoken on the issue raised by the petitioners, and its expressions wholly support the decision of the Washington State Supreme Court.

2. Petitioners' contention (Pet. Br. p. 11) that "The decision of the court below authorizes the teaching of secular religion in the public schools" illustrates the frivolous nature of their claim. There may be many things taught at a University which offend petitioners' religious beliefs but, as Justice Frankfurter noted in his dissent in *Board of Education vs. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 82 L.Ed. 1628 [1943] at page 654,

> "The essence of the religious freedom guaranteed by our Constitution is therefore this: no religion shall either receive the state's support or incur its hostility. Religion is outside the sphere of political government. This does not mean that all matters on which religious organizations or beliefs may pronounce are outside the sphere of government. Were this so, instead of the separation of church and state, there would be the subordination of the state on any matter deemed within the sovereignty of the religious conscience. Much that is the concern of temporal authority affects the spiritual interests of men."

And so, it might be added, much that concerns the scholar affects the spiritual interests of men. But to disqualify such interests from scholarly study in a state university on the principles asserted by petitioners would subordinate the state and its university to anything deemed within the sovereignty of religious conscience by some sectarian agent.

3. Since the granting or denial of the Writ rests with the sound discretion of the Court, the words of Justice, Robert Jackson, concurring in *State ex rel. McCollum vs. Board of Education,* 333 U.S. 203, at page 235, 68 S.Ct. 461, 92 L.Ed. 649 [1948] seem appropriate. Though he was concerned about petitioners' standing to sue, the following seems pertinent to the question now before this Court:

> "Authorities list 256 separate and substantial religious bodies to exist in the continental United States. Each of them, through the suit of some discontented but unpenalized and untaxed representative, has as good a right as this plaintiff to demand that the courts compel the schools to sift out of their teachings everything inconsistent with its doctrines. If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to constant law suits.
>
> "While we may and should end such formal and explicit instruction as the Champaign plan and can at all times prohibit teaching of creed and catechism and ceremonial and can forbid forthright proselyting in the schools, I think it remains to be demonstrated whether it is possible, even if desirable, to comply with such demands as plaintiff's completely to isolate and cast out of secular education all that some people may reasonably regard as religious instruction."

Respondent respectfully submits that the petition for Writ of Certiorari should be denied.

Respectfully submitted,

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